

7 Official Opinions of the Compliance Board 284 (2011)

Public Body – Subcommittee created informally by one member of the public body does not meet the definition of a “public body” unless it performs the public body’s function
Compliance Board – Jurisdictional Limits – No authority to address Public Information Act requests concerning the respondent public body

November 10, 2011

Michelle J. Fluss
Complainant

State Biosolids Task Force Fees
Subcommittee
Respondent

We have considered the allegations of Michele J. Fluss (“Complainant”) that the Fees Subcommittee of the State Biosolids Task Force violated the Open Meetings Act by meeting to discuss public business on August 31, 2010, and September 15, 2010 without complying with the Open Meetings Act (“the Act”). The Subcommittee states that it is not a “public body” as defined by the Act and therefore is not subject to the Act.

We find that the Subcommittee is not a “public body” within any of the three definitions set forth in §10-502(h) of the State Government Article (“SG”). First, under the pertinent provisions of §10-502(h) (1), a body consisting of at least two people is deemed a “public body” if it is created by one of the legal instruments in that paragraph, such as a resolution. The affidavit of the Maryland Department of the Environment (“MDE”) Division Chief who serves as Chair of both the Task Force and the Subcommittee states that he created the Subcommittee informally, so that definition is not met.

Second, a multi-member body is a “public body” if it was appointed by “an official subject to the policy direction of the Governor” and includes at least two people not employed by the State, *see* SG §10-502 (h)(2)(i) – unless it is a “subcommittee” of such a body. *See* SG §10-502(h)(3)(ix). We concluded in 5 *OMCB Opinions* 182 (2007) that the Task Force itself was a public body by virtue of the fact that it had been appointed by the Secretary of the Environment, an “official subject to the policy direction of the Governor.”¹ The subcommittee, however, is apparently just that; we have no reason to suspect that the Chair appointed it to either avoid the Act or displace the Task

¹ The 5-person subcommittee did not create a quorum of the Task Force, which was comprised of over 10 members.

Force. We caution, however, that the formation of subcommittees without an identifiable function within the larger body invites the perception that they were created to evade the Act. Such perceptions may be avoided by simply posting a public notice and meeting publicly.

Third, a body is a “public body” if it is appointed by an official subject to the policy direction of an entity which (1) is “in the Executive Branch of State government,” (2) is comprised of “members ...appointed by the Governor, and (3) “otherwise meets the definition of a public body under [§ 10-502(h)].” SG §10-502(h)(2)(ii)(A) and (B). Here, the appointing official is a division chief at MDE, which clearly does not meet the second two prongs of that test.² The third definition also is not met.

We add one procedural observation. Page 2 of this complaint contains the statement that “[b]y copy of this complaint via the [Compliance Board] to the Fees Committee, I request that the subcommittee consider paragraph 1.f above as a request under the PIA.” A Public Information Act, or PIA, request must be submitted to the custodian of the documents. SG §10-614. The Compliance Board does not serve as custodian of other bodies’ records, has no jurisdiction over PIA matters, and will not undertake to advise public bodies that a complaint addressed to the Board may also contain a PIA request. In sum, this Board is not a proper conduit for PIA requests to other entities.

In conclusion, the subcommittee in question was not subject to the Act and so did not violate it.

OPEN MEETINGS COMPLIANCE BOARD

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio A. Morales, Esquire

² MDE is a department or “unit” of government under the direction of an official appointed by the Governor. SG §8-201(b)(6). It is comprised of “subunits,” and is not a body either of “individuals,” for purposes of SG § 10-502(h)(1)(i) or of “members appointed by the Governor.” See SG § 8-305 (referring to the organization of principal departments and other “units”). For example, one could not determine whether a “quorum” of MDE had met; there are no “members” to count.